

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRICK D. STERLING, SPIRIT AND  
SELF MINISTRIES, SYLVESTER  
BRADFORD, and YVONNE TIJERINO,

Plaintiffs,

v.

DEUTSCH BANK AMERICAS, MARILYN Y.  
RODRIQUEZ, SPRE, INC., GMAC  
MORTGAGE, CYPREXX CORPORATION,  
WOLF FIRM, KAYO MANSON-TOMKIN,  
ALAMEDA COUNTY SHERIFF, and  
ALAMEDA COUNTY COUNSEL,

Defendants.

No. C 14-00827 CW  
ORDER DENYING  
PLAINTIFFS'  
APPLICATION FOR  
TRO AND  
PRELIMINARY  
INJUNCTION

(Re: Docket Nos.  
12, 15)

Plaintiffs Darrick D. Sterling and Yvonne Tijerino move for a temporary restraining order (TRO) and preliminary injunction against Defendants Deutsche Bank Americas, et al. to "halt all state court unlawful detainer/claim of right possession hearings and proceedings scheduled for 03/13/2014 in Oakland Superior Court Dept. 31." Defendants Deutsche Bank Trust Company Americas (Deutsche Bank)<sup>1</sup> and The Wolf Firm oppose the motion. The Court DENIES Plaintiffs' motion.

To obtain either a TRO or a preliminary injunction, the moving party must demonstrate "(1) a likelihood of success on the merits; (2) a significant threat of irreparable injury; (3) that

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<sup>1</sup> Deutsche Bank was erroneously sued as Deutsch Bank Americas.

1 the balance of hardships favors the applicant; and (4) whether any  
2 public interest favors granting an injunction." Raich v.  
3 Ashcroft, 352 F.3d 1222, 1227 (9th Cir. 2003); see also Winter v.  
4 Natural Res. Def. Council, Inc., 129 S. Ct. 365, 374 (2008).  
5 Alternatively, an injunction could issue where "the likelihood of  
6 success is such that serious questions going to the merits were  
7 raised and the balance of hardships tips sharply in plaintiff's  
8 favor," so long as the plaintiff demonstrates irreparable harm and  
9 shows that the injunction is in the public interest. Alliance for  
10 the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011)  
11 (citation and internal quotation marks omitted). Injunctive  
12 relief is "an extraordinary remedy that may only be awarded upon a  
13 clear showing that the plaintiff is entitled to such relief."  
14 Winter, 555 U.S. at 22.

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16 As a preliminary matter, the Court explicitly ordered  
17 Plaintiff to serve notice of the application for TRO as soon as  
18 practicably possible, but no later than March 10, 2014 at 12:00  
19 PM. Docket No. 13. Plaintiff failed to do so, instead effecting  
20 delivery on March 12, 2014. Although Plaintiffs argue that they  
21 did not see the Court's order until the morning of March 12,  
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1 2014,<sup>2</sup> it is no excuse that Plaintiffs failed to monitor the  
2 Court's docket when they themselves asked for the Court to review  
3 the application for a TRO on short deadline. This resulted in  
4 Defendants filing a response late on the night of March 12, 2014.

5 In any event, it is improper for a federal court to "grant an  
6 injunction to stay proceedings in a State court except as  
7 expressly authorized by Act of Congress, or where necessary in aid  
8 of its jurisdiction, or to protect or effectuate its judgments."

9 Younger v. Harris, 401 U.S. 37, 40 (1971) (quoting 28 U.S.C.  
10 § 2283). Plaintiffs have not identified circumstances warranting  
11 such an exception. In their motion for a TRO, they allege that  
12 their rights under the following statutes were violated: (1) Truth  
13 in Lending Act (TILA) and Real Estate Settlement Procedures Act  
14 (RESPA), (2) the Americans with Disabilities Act (ADA), (3) the  
15 Fourth Amendment, (4) 42 U.S.C. § 1983, (5) quiet title, and  
16 (6) fraud. Docket No. 12 at 3. With all proper inferences in  
17 favor of Plaintiffs, this could be understood as urging the Court  
18 to enjoin state court proceedings in order to preserve its  
19 jurisdiction to resolve the federal claims asserted by Plaintiffs.  
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24 <sup>2</sup> See Docket No. 15 (Plaintiffs' "motion that recently filed  
25 proof of service not be deemed untimely, as well as the service on  
26 defendants"). While the Court notes that Plaintiffs failed to  
27 meet the deadline for service set in the Court's March 7, 2014  
28 order, and therefore DENIES Plaintiffs' motion, the Court does not  
base its decision denying the motion solely on Plaintiffs' failure  
to serve timely.

1 The only irreparable harm identified by Plaintiffs is the  
2 upcoming hearing and lockout on the property in question, 6600  
3 Brann Street, Oakland, CA 94605. Accordingly, the Court first  
4 addresses those claims that are directly related to the  
5 foreclosure. Defendants draw the Court's attention to the fact  
6 that Bradford had a loan in the amount of \$368,000.00 on the  
7 property in question. RJN, Ex. 1.<sup>3</sup> In February 19, 2009, notice  
8 of default was filed against Bradford, who appeared to be in  
9 default in the amount of \$11,031.02. RJN, Ex. 2. On May 23,  
10 2008, a Notice of Trustee's Sale was recorded, setting a sale date  
11 of June 18, 2008. RJN, Ex. 3. According to the Trustee's Deed  
12 Upon Sale, the trustee's sale occurred on August 1, 2008 and the  
13 property was conveyed by quitclaim deed to Deutsche Bank Trust  
14 Company Americas as Trustee. RJN, Ex. 4; Docket No. 12 at 4.  
15 Defendants attempted to execute a lockout on at least two  
16 occasions, if not many more. Docket No. 12 at 5-6; see generally  
17 Manson-Tompkins Decl. Plaintiffs have attempted to remove to  
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24 <sup>3</sup> Defendants filed a request for judicial notice which  
25 included deeds of trust and foreclosure documents. Docket No. 18.  
26 Plaintiffs have not filed an opposition. The Court may take  
27 judicial notice of facts that are not disputed and are easily  
28 verified. Botelho v. U.S. Bank, N.A., 692 F. Supp. 2d 1174, 1177  
(N.D. Cal. 2010). The Court therefore takes judicial notice of  
certain publicly-filed documents, but will not accept as true the  
facts described in the documents that are in dispute.

1 federal court the same state court unlawful detainer action  
2 regarding the same property at least four times.<sup>4</sup>

3 Plaintiffs claim that, after the foreclosure sale, Defendants  
4 wrongfully blocked off and segmented the property and prevented  
5 handicapped and disabled residents from accessing the property,  
6 causing them harm. Docket No. 12 at 4-5. Plaintiffs further  
7 allege that in June 2011, this matter was challenged in state  
8 court and Deutsche Bank was determined not to have "proper  
9 standing to ownership or to initiate any action," but Plaintiffs  
10 do not provide any case information or order so holding. Id.  
11 at 4.

12  
13 Plaintiffs challenge the circumstances of the foreclosure  
14 under TILA and RESPA. TILA was enacted "to assure a meaningful  
15 disclosure of credit terms so that the consumer will be able to  
16 compare more readily the various credit terms available to him."  
17 Yamamoto v. Bank of New York, 329 F.3d 1167, 1170 (9th Cir. 2003).  
18 "If the required disclosures are not made, the consumer may  
19 rescind." Id. Congress enacted the RESPA to control real estate  
20 settlement costs and ensure that consumers receive better  
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23 <sup>4</sup> See RJN, Ex. 7 (Judge Seeborg's August 9, 2013 order  
24 remanding the unlawful detainer action for lack of jurisdiction,  
25 noting it was "at least the fourth time" that Bradford had removed  
26 the unlawful detainer action to federal court, and further  
27 stating, "In the event Bradford does file a separate action in  
28 this Court asserting affirmative claims against Deutsche Bank, it  
will be randomly assigned to a judicial officer. Further attempts  
to remove the unlawful detainer will continue to subject Bradford  
to penalties for violating express court orders.").

1 information on the nature and costs of the settlement process so  
 2 that they can be protected "from unnecessarily high settlement  
 3 charges caused by certain abusive practices that have developed in  
 4 some areas of the country." Bloom v. Martin, 865 F. Supp. 1377,  
 5 1381 (N.D. Cal. 1994) aff'd, 77 F.3d 318 (9th Cir. 1996). "To  
 6 effectuate these objectives, RESPA requires advance disclosure of  
 7 settlement costs, the elimination of kickbacks or referral fees,  
 8 and a reduction of the amount that buyers are required to place in  
 9 escrow accounts for taxes and insurance." Id.

11 Regarding their quiet title and fraud claims, Plaintiffs  
 12 plead no facts supporting either of these claims.<sup>5</sup>

13 The facts alleged in support of the remaining causes of  
 14 actions are that there was "lack of due process in attempting to  
 15 foreclose (incorrect names, no proper service, agents for bank  
 16 named personal recipient upon check for receipt of loan proceeds,  
 17 title never being transferred out of owner's names post purported  
 18 foreclosure)." Docket No. 12 at 6. These bare contentions are  
 19 insufficient to demonstrate a likelihood of success on the merits  
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22 <sup>5</sup> Briosos v. Wells Fargo Bank, 2011 WL 1740100, at \*4, \*10  
 23 (N.D. Cal.) (fraud requires plaintiff to plead and prove facts  
 24 showing: "(1) lack of knowledge; (2) lack of means of obtaining  
 25 knowledge (in the exercise of reasonable diligence the facts could  
 26 not have been discovered at an earlier date); and (3) how and when  
 27 he did actually discover the fraud or mistake"; quiet title  
 28 requires: "a legal description and common designation of the  
 property; (2) the title of the plaintiff and its basis; (3) the  
 adverse claims to the plaintiff's title; (4) the date as of which  
 the determination is sought; and (5) a prayer that title is  
 quieted in the plaintiff.").

1 under either statute. Plaintiffs have not identified the specific  
2 code sections that were purportedly violated, nor have they set  
3 forth specific facts or documents to support their blanket  
4 assertion that any of the defects ever occurred.

5 Because Plaintiffs have not demonstrated a likelihood that  
6 the foreclosure and corresponding sale were faulty, they cannot  
7 show a likelihood that they are entitled to occupy the premises at  
8 issue. Therefore, their allegations that the Wolf Firm, the  
9 sheriff, and others wrongfully prevented Plaintiffs from entering  
10 the premises must fail. Plaintiffs' additional allegations that  
11 the sheriff's department used excessive force, inflicted mental  
12 harm, and prevented disabled individuals from entering are vague  
13 and conclusory and do not demonstrate a likelihood of success of  
14 prevailing on their ADA, Fourth Amendment, and § 1983 claims.  
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16 Because Plaintiffs have not demonstrated a likelihood of  
17 success on the merits on any of their claims, and have not even  
18 addressed balancing of the equities or the impact of granting an  
19 injunction on the public interest, the Court DENIES Plaintiffs'  
20 application for TRO and preliminary injunction.  
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22 IT IS SO ORDERED.  
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24 Dated: 3/18/2014  
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CLAUDIA WILKEN  
United States District Judge